IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3812 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RELIEF SHOPPING CENTER SHOPS AND OFFICES OWNERS ASSO.

Versus

AHMEDABAD MUNICIPAL CORPORATI-ON

Appearance:

1. Special Civil Application No. 3812 of 2003

MR RJ OZA for Petitioner No. 1-2

..... for Respondent No. 1,3-4

MR MG NAGARKAR for Respondent No. 1/A-1/B

MR KB PUJARA for Respondent No. 2

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE K.A.PUJ

Date of decision: 17/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

Rule. Service of Rule is waived by learned advocate Mr.K.B.Pujara for Ahmedabad Electricity Company Ltd. and learned advocate Mr.M.G.Nagarkar for Ahmedabad Municipal Corporation.

2) The petitioner is a non-trading Corporation duly registered under the Bombay Non-Trading Corporations Act, have filed this petition challenging the decision of the respondent-Corporation as contained in notice dated 28th May, 2003, to disconnect electricity supply of the members of the petitioner-Association, in the event of failure of installing fire safety measures latest by 31st March, 2003. The petitioners have further challenged the decision or action of the respondent-Corporation of applying seal to the various premises occupied by the members of the petitioner-Association in the Relief Shopping Center under the pretext that no fire safety measure has been provided in the said building. The petitioners have stated that the action of applying the seal is absolutely illegal and uncalled for and it was also violative of principles of natural justice and contrary to the provisions contained in Articles 14 and 19 of the Constitution of India.

3) This Court has issued notice on 4-4-2003, only with a view to see whether seal was applied due to the failure to install fire safety measure or for any other reason. Appearance was filed on behalf of the Ahmedabad Municipal Corporation and the Ahmedabad Electricity Company Ltd.

4) Heard Mr.R.J.Oza, the learned advocate appearing for the petitioner and Mr.Nagarkar, the learned advocate appearing for the respondent No.1-Corporation and Mr.K.B.Pujara, the learned advocate appearing for the respondent No.2, i.e. Ahmedabad Electricity Company Ltd. Since the relief is claimed only against the respondents No.1 and 2 and at the joint request of the petitioner, as well as the respondents No.1 and 2, this petition is taken up for final disposal.

5) Mr.R.J.Oza, the learned advocate appearing for the petitioner submits that seal was applied only because of non-installation of the fire safety measure and there was no other reason for applying the said seal. This fact was not controverted by the learned advocate appearing for respondent-Corporation. As far as installation of fire safety system is concerned, this

Court has disposed of number of petitions granting time to the petitioners of those petitions to install the fire safety measures on or before 31st October, 2003. While time is granted to the other petitioners and the authorities were restrained either from disconnecting electricity connection or drainage supply and they were also restrained from applying seal on that count, there is no justification in continuing the seal over the premises of the members of the petitioner-Association. It is more so when the petitioner has specifically stated that the petitioner-Association had passed the resolution No.13 dated 2-4-2003, authorising Chairman/Secretary to undertake the responsibility of installation of fire safety by synchronizing as higher protection system to complete the work expeditiously and also to file affidavits and other undertakings in this Court. It is further stated that the petitioner had made part payment of fire safety installment charges for which receipts were issued in favour of the petitioner-Association. It was also stated that the petitioner had got opened separate account to meet with expenses for installation of fire safety and at present the credit balance of Rs.2,09,334/- is in the said account, which is more than sufficient to meet with the expenses of fire safety. It is further assured that the petitioner would not utilize the said fund for any other purpose, except to make the payment for installation of fire safety system in the Relief Shopping Center. In view of this averments made in the petition and also in view of common order passed by this Court in other cognate allied matters, we give following directions.

DIRECTIONS

{i} Since the petitioners have not installed requisite fire safety so far, which is otherwise required for its building, namely, Relief Shopping Center, shall install fire safety system as required under the law on or before 31st October, 2003.

{ii} Upon completion of such installation, the petitioner shall apply to AMC for the purpose of obtaining "No Objection Certificate" and further having made such an application, it will be incumbent upon the AMC to decide either by way of granting or rejecting "No Objection Certificate" within a period of 30 days from the date of such application along with the payment of scrutiny fees.

{iii} On receipt of such "No Objection Certificate", the petitioners shall apply for grant or Building Use

permission, if so required, either under GDCR or BPMC Act to the AMC in a prescribed form with requisite date and information within a period of 30 days with a copy to AEC and the AEC shall not discontinue or disconnect the electric supply of the petitioner till the decision is taken by the Ahmedabad Municipal Corporation.

{iv} Seal applied by the Ahmedabad Municipal Corporation on 1-4-2003 vide its notice produced at Annexure-A to the petition is ordered to be removed on the condition that the petitioner shall install the fire safety system on or before 31st October, 2003 and on further condition that the petitioner shall file an undertaking in that regard before this Court within ten days from today, stating that the said fire safety system would be installed on or before 31st October, 2003 and that the funds collected for that purpose would be kept in separate bank account and that the same amount would not be utilised for any other purpose except for installation of fire safety system and that on installation of the fire safety system, the petitioner shall apply to respondent-Corporation for "No Objection Certificate" and after receipt of that certificate if there is any other violation of the building bylaws or the Building Use permission, the petitioner shall apply afresh to the respondent-Corporation either under GDCR or BMPC Act to the Ahmedabad Municipal Corporation within the time limit as specified hereinbefore.

{v} It is made clear that the protection is granted to the petitioner only upto the limited period and in the event of non-issuance of "No Objection Certificate" or in the even of issuance of notice for any other breach of building bylaws or applicable rules and regulations, it is open for the authority to send such a report to Ahmedabad Electricity Company Limited within one week from such non-issuance of "No Objection Certificate" or issuance of any other notice in breach of building bylaws. An intimation of the same shall be also sent to the petitioner.

{vi} Upon receipt of the report or intimation as indicated above from Ahmedabad Municipal Corporation, the Ahmedabad Electricity Company Ltd. shall, before disconnecting electricity supply, serve a notice to the petitioner granting them 30 days time from the date of receipt of such notice with a view to facilitate the petitioner with an opportunity for making alternative arrangement or to avail permissible redressal.

{vii} In the event of non-issuance of "No Objection

Certificate" or in the event of issuance of any other notice for breach of building bylaws or rules or regulations applicable thereto, the Ahmedabad Municipal Corporation shall also issue the notice to the petitioner granting 30 days time before applying the seal or disconnecting drainage supply or any other such action to be taken against the petitioner, with a view to facilitate the petitioner with an opportunity for making alternative arrangement or to avail permissible legal redressal.

6) It is further clarified, for the removal of doubt, if any, that notices earlier issued by the authorities are not to be acted upon and implemented by which time the authorities are directed to decide the applications made and/or to be made by the petitioners and it is open for the authorities for further action, after consideration of the application of the petitioner to take permissible legal action.

7) This petition shall stand disposed of with aforesaid directions. However, we clarify with a view to remove doubt that in case of any difficulty to any party, it will be open for such party to approach or move this Court. Upon request direct service is permitted qua respondent Nos.1 and 2.

8) The petition is accordingly disposed of. Rule is made absolute to the above extent with no order as to costs.

(J.N.Bhatt, Acting C.J.)

(K.A.Puj, J.)
/malek